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**FILED**  
 LOS ANGELES SUPERIOR COURT  
 OCT 12 2004  
 JOHN A. CLARKE, CLERK  
 BY J. LORENZ, DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 FOR THE COUNTY OF LOS ANGELES

REC'D  
 SEP 27 2004  
 FILING WINDOW

Barbanel & Treuer  
 ATTORNEYS AT LAW

11 LORYAN GROUP, INCORPORATED,  
 dba CANYON CLEANERS; ROBERT S.  
 12 KREISBERG, TRUSTEE OF THE  
 13 Kreisberg Family Trust dated May 19, 1993;  
 and ERNEST BENNETT,

Case No. BC 289422

Assigned to Hon. Alan Buckner

Complaint Filed: 1/29/03

14 Plaintiff,

**[PROPOSED] ORDER GRANTING  
 DEFENDANT GENERAL STAR  
 SUMMARY JUDGMENT**

15 vs.

[Filed concurrently with Declaration of  
 James B. Green Regarding Submission of  
 General Star's [Proposed] Order on Motion  
 for Summary Judgment]

16 GENERAL STAR NATIONAL  
 INSURANCE COMPANY, et al.,

17 Defendants.

Date: September 16, 2004  
 Time: 9:30 a.m.  
 Dept.: 14

19 GENERAL STAR INDEMNITY  
 COMPANY,

20 Cross-Complainant,

21 vs.

22 LORYAN GROUP, INCORPORATED dba  
 23 CANYON CLEANERS; ROBERT S.  
 24 KREISBERG, TRUSTEE OF THE  
 Kreisberg Family Trust dated May 19, 1993;  
 25 and ERNEST BENNETT, and Roes I  
 through 10, et al.,

26 Cross-Defendants.

27  
 28  
 [PROPOSED] ORDER GRANTING DEFENDANT GENERAL STAR'S MOTION FOR SUMMARY  
 JUDGMENT OR ALTERNATIVELY SUMMARY ADJUDICATION

1 The motion of defendant General Star Indemnity Company ("General Star") for  
2 summary judgment or, alternatively, summary adjudication came on regularly for hearing  
3 before this Court on September 16, 2004 at 9:30 a.m. Counsel of record appeared for  
4 General Star. Counsel for plaintiffs failed to appear and failed to file an opposition to  
5 General Star's motion.

6 After full consideration of the papers, the oral arguments in support of General Star's  
7 motion and all of the matters presented to the Court, the Court found no genuine issues of  
8 material facts with regard to plaintiffs' causes of action for breach of contract and breach of  
9 the covenant of good faith and fair dealing. Accordingly, the Court ruled as follows:

10 It is undisputed that plaintiffs made misrepresentations in their June 1, 1999 policy  
11 application to General Star. First, it is undisputed that plaintiffs misrepresented their own  
12 knowledge of past leaks and spills at the insured premises. See Deposition of Ernest Bennett  
13 ("Bennett Depo.") at 20:8 - 21:22; Bennett's Responses to Special Interrogatories in *Elliott*  
14 *v. Kreisberg, et al.*, Los Angeles Superior Court Case No. BC 254069 ("the *Elliott Action*")  
15 at p. 3, Ins. 13-17, attached as Exhibit 1 to Bennett Depo; Declaration of Sep Melamed.  
16 Second, it is undisputed that plaintiffs misrepresented their and their landlord's knowledge of  
17 past and pending environmental assessments at the insured premises. See Declaration of Sep  
18 Melamed, including exhibits attached thereto; Declaration of Barbara Elliott; Declaration of  
19 Charles Choi including exhibit 1 attached thereto; Bennett Depo at pp. 65-74 and 121:13-23.  
20 It is further undisputed that the foregoing misrepresentations (upon which General Star  
21 relied) were material to General Star's decision to underwrite plaintiffs' risk and issue  
22 plaintiffs' insurance policy. See Declaration of Alan Rodrigues.

23 As a matter of law, material misrepresentations in the insurance policy application  
24 justify rescission and serve as a complete defense to coverage. Cal. Ins. Code §§ 331, 358,  
25 359; *Merced County Mutual Fire Ins. Co. v. State of California*, 233 Cal. App. 3d 765, 772  
26 (1991); *Williamson & Vollmer Engineering v. Sequoia Ins. Co.*, 64 Cal.App.3d 261 (1976);  
27 *Coca Cola Bottling Co. v. Columbia Cas. Ins. Co.*, 11 Cal. App.4th 1176, 1189, fn. 4  
28

1 (1992); *Old Line Life Ins. Co. v. Superior Court*, 229 Cal. App.3d 1600, 1604 -05 (1991),  
2 citing *Holz Rubber Co., Inc. v. American Star Ins. Co.*, 14 Cal. 3d 45, 61 (1975); *Imperial*  
3 *Cas. & Indemnity Co. v. Sogomonian*, 198 Cal. App. 3d 169, 181 (1988).

4 It is also undisputed that after the policy application was submitted to General Star  
5 (but before General Star issued plaintiffs' policy), plaintiffs failed to fulfill their continuing  
6 duty to notify General Star of material information. Plaintiffs breached their duty by, *inter*  
7 *alia*, failing to notify General Star that plaintiffs had received notice that contamination at  
8 plaintiffs' premises had been confirmed. See Rabkin letter dated July 22, 1999, attached as  
9 Exhibit C to Requests for Admissions; Plaintiffs' Response to Request for Admission No.  
10 16.

11 As a matter of law, breach of the continuing duty to notify the insurer of material  
12 information justifies rescission and serves as a defense to coverage. Cal. Ins. Code §§ 330  
13 and 332; *Lunardi v. Great West Life Assurance Co.*, 37 Cal. App. 4th, 807, 827 (1995);  
14 *Goss v. Security Ins. Co of Colorado*, 2 Cal. App. 2d 459 (1934).

15 Due to plaintiffs' undisputed material misrepresentations in their policy application  
16 and plaintiffs' undisputed breach of their continuing duty to notify General Star of material  
17 information prior to General Star's issuance of plaintiffs' policy, the Court finds, as a matter  
18 of law, that General Star did not a breach the insurance contract with Loryan or the covenant  
19 of good faith and fair dealing implied in that contract. Accordingly, both of plaintiffs' causes  
20 of action fail as a matter of law and judgment must be entered in favor of General Star.

21 **THEREFORE, IT IS ORDERED** that summary judgment is granted in General  
22 Star's favor and that judgment be entered in favor of General Star as to the entire first  
23 amended complaint.

24 **IT IS SO ORDERED.**

25 Date: 13 Oct 04

26   
27 Honorable Alan Duckner, Judge of the  
28 Superior Court of California